

REZENSIONEN / REVIEWS

HIROSHI ODA

Japanese Law (fourth edition)

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In 1992 Hiroshi ODA published *Japanese Law*. The book was greatly successful. A second edition followed in 1999 and a third in 2009. In 2021, Oxford University Press published the fourth edition. What follows is a review of this latest edition, with some necessary references to the previous ones.

A review of the table of contents suggests that little has changed from the third edition. In terms of structure, the work is generally the same. One paragraph was deleted (para. 14.7), and some were added (paras. 5.4, 6.4, 19.6–8); some titles have changed slightly (Intr. 2, 2.6, the title of Ch. 5 and paras. 5.3, 5.7, 5.8, Ch. 13 extensively, 17.5, 18.3, 19.2); but the chapters and their order do not differ. A detailed, quantitative analysis of the text, revealing what has changed between the third and the fourth edition is beyond the scope of this review. All chapters seem to have undergone some rewriting. The biggest updates are seen in the chapters on contract law and business law, but different capitalization of words or other slight modifications show that also the paragraphs on historical backgrounds have, to some extent, been subject to revision. However, the general approach of the work and the bulk of the text have not changed substantially from the previous editions, and the strengths and the weaknesses of this edition largely overlap with those already identified in the English reviews of the previous editions.¹

As in the previous edition, ODA stresses in the preface that “the focus of this book is business and commercial law”, noting that treatment of other subjects is also being included since knowledge of the legal system is needed in order to understand how these fields work. The number of pages allotted to the subjects attests to this prioritization: of 491 pages, 206 belong to Part III, dedicated to business-related laws. Part II on the Civil Code is made up of 110 pages, of which only thirteen are devoted to topics bearing little connection to business law, such as family and inheritance law. Part I,

¹ K. L. PORT, *Japanese Law* by Hiroshi Oda, *American Journal of Comparative Law*, 42 (1994) 452; V. TAYLOR, *Japanese Law*, *Australian Journal of Asian Law* 2 (2000) 99; L. NOTTAGE, *Japanese Law*, *Australian Journal of Asian Law* 11 (2009) 322.

“The basis of the system”, encompasses 104 pages and includes a historical introduction along with an outline of constitutional law, administration of justice, and the legal professions. Part IV, “Other laws”, with fifty-nine pages, is the shortest. It provides information on civil and criminal procedure, and it includes a chapter titled “International Relations”.

The author also states in the preface that this fourth edition aims at analysing critically both the practical outcome of the reforms of the early 2000s as well as the amendments to the first three books of the Civil Code that entered into force in 2020.

The book presents the information clearly and without many frills. The analysis focuses predominantly on black letter law, accompanied when suitable with examples drawn from case law. The importance accorded to the latter is corroborated by the number of cases cited: the table of cases lists 211 judgments and decisions of the Supreme Court and some 150 rulings of other institutions, including the pre-war Supreme Tribunal.

Overall, the impression this reviewer obtained by reading the book is that it targets English legal professionals doing business in Japan or with Japanese clients, thus individuals who need a complete and reliable – but at the same time quick and easy – guide to Japanese business law supplemented by a smattering of the rest of the legal system. The author is, in fact, not only a distinguished academic, having taught at prestigious universities in Europe and Japan, but also a consummate practitioner, his being a solicitor in England and Wales, an attorney at law in Japan, and member for Japan of the ICSID Panel of Arbitrators at the World Bank. In this sense, ODA is writing for an audience of peers whose needs and curiosities he knows well. An attorney at law will appreciate the confidence of the exposition and the decision to avoid verbose doctrinal speculation. The book is highly informative and achieves the goal of giving such professionals the answers they need, without indulging more billable time than strictly required.

This reviewer, however, does not belong to that demographic. What are strengths from the point of view of the practitioner, are flaws from the point of view of a comparative law scholar and instructor of courses on Japanese law. In particular, the book does not match the needs of instructors and scholars in three respects.

The first is related to the overall balance among the subjects. Devoting ample space to business-related law means that aspects of the legal system that typically spark the interest of students receive relatively little attention. For example, the cornerstone document of a legal system is not granted a chapter of its own: paragraph 2.2 on the Constitution, embedded in Chapter 2 on the sources of law, is barely nine pages long. Of course, several other passages deal with constitutional law and doctrines, in particular Chapter 5 on the protection of fundamental human rights, but the contrast

with, for example, the seventy-six pages of Chapter 11 on corporate law is stark. Thirty-six pages analyse in great detail the Financial Instruments and Exchange Law, while Book IV of the Civil Code on family law is dealt with in less than ten pages, of which two cover its historical background. In part related to this, certain choices on to how to divide and organize the contents do not seem very convincing. It is, for instance, hard to see how a reader benefits from the analysis of the provisions of the Constitution being broken into different chapters, or from some aspects of the administration of justice being presented in Chapter 3, while civil and criminal procedure appear in Chapters 17 and 18, respectively. The eight lines devoted to the Hague Convention on the Civil Aspects of International Child Abduction are to be found not in the section on family law or under “International Relations”, but in Chapter 7.1 on obligations and contracts, thus in subsection three on the enforcement of obligations (p. 148).

The second set of problems is related to the Romanization and translation of Japanese words and expressions. The standardization of translated terms is always a challenge, especially in law. Lawyers and jurists can be very fastidious about lexical accuracy. It would be too much to ask that a book, even one as authoritative as *Japanese Law*, could establish standard translations for Japanese law scholars and practitioners, but one would expect that where those standards exist, *Japanese Law* would follow them. In fact, while there are no official translations of Japanese statutes, there is something similar. Launched in 2009, the Japanese Law Translation Database System² (JLTDS) has three characteristics that should make it the default choice when it comes to translating Japanese legal jargon into English: its strong institutional endorsement, i.e. the Ministry of Justice of Japan; its convenience, as it is accessible from any location, anytime, and for free; and its dimension, as it has an extensive database of statutes and a legal dictionary. Of course, authors and translators are free to choose the words they prefer and depart from de facto standards. This reviewer as well deviates from the JLTDS at times. However, in absence of specific reasons, sticking to the JLTDS would be more considerate for the readers, as some might search the JLTDS or attempt to coordinate what they read on *Japanese Law* with information from other sources. Some changes are easily recognizable: for example, ODA’s “Law on Prevention of Water Pollution” is the “Water Pollution Prevention Act” on the JLTDS; the “Law on Administrative Procedure” is the “Administrative Procedure Act”. However, not everyone will instantly recognize that ODA’s “Law on Government Employees” is what the JLTDS calls the “National Public Service Act”, or that the “Law on Exceptions to the Civil Code on Means of Publicity con-

2 <http://www.japaneselawtranslation.go.jp/>.

cerning Assignment of Claims” corresponds to the “Act on Special Provisions for the Civil Code Concerning the Perfection Requirements for the Assignment of Movables and Claims”.³ ODA’s English sounds more elegant, and the footnotes duly report number and year of all statutes, practically eliminating all chances of mistake, but – still – standardization would be helpful.⁴ Sometimes the same document or name is mentioned differently in different locations of the book. Japanese words are usually Romanized using the Hepburn system, but not always. There are several unusual, non-standard translation choices encountered besides the names of statutes. The most evident is probably “Appellate Court” for *kōtō saiban-sho*, whereas in most academic literature the standard translation is “High Court”. ODA explains his choice in a footnote at p. 57, claiming that this is necessary to distinguish the Japanese tribunal from the English High Court. This is but one example of a certain Anglocentric approach that permeates all through the work. It is thus not clear why the *Saikō Saiban-sho* does not receive the same treatment and is consistently called the Supreme Court, given that there is now a Supreme Court also in England, or why there is mention of a Senate and a Privy Council (p. 118), institutions whose names cannot be considered quintessential Japanese.⁵

Thirdly, the footnotes fall short of an instructor’s expectations in two respects. Not all bibliographical references have been updated, even when more recent editions of referenced works have appeared. This may not be a major problem in sections on historical developments or in other general background information, but the impression is that this edition, as far as the references are concerned, is not “fully updated and revised” as the dust jacket claims. What is more perplexing is that, while many Japanese scholarly works are cited, the footnotes ignore nearly all the latest works on Japanese law in English. The state of Japanese legal studies outside of Japan has changed radically from 1992, when the first edition of *Japanese Law* was published, or from 2000, when Veronica TAYLOR, reviewing the second edition, had already pointed out the almost total absence of citations to non-Japanese writing.⁶ Today there are countless book-length studies, collections of symposia papers, articles, and other resources in English and other Western languages on practically every aspect of Japanese law.

3 This was mentioned already by Port in his review: PORT, *supra* note 1, 453 fn. 9.

4 A practical hint to find the corresponding statute on the JLTDS is to substitute “Law” (the term generally used in this book) with “Act” (the term generally used by the JLTDS), with the necessary adjustments. There are, however, cases in which the transformation is more creative.

5 ODA is most likely making reference to the *Genrō-in* and the *Sūmitsu-in*.

6 TAYLOR, *supra* note 1, 102. Also Luke NOTTAGE, reviewing the third edition in 2009, hinted at this problem: NOTTAGE, *supra* note 1, 322–323.

Throughout the entire book, only four recent English sources on Japanese law are cited.⁷ A few lines in the third edition briefly presented the situation of Japanese law studies in the United States, Germany, and Australia in the opening paragraph of “Japanese Law Viewed from Abroad”, but they have been removed and replaced with a handful of remarks about how to situate Japanese law among legal families, about Japanese non-litigiousness, and about the reception of foreign law. The only post-1980 academic reference cited in this section is the comparative law textbook by ZWEIGERT and KÖTZ. This falsely portrays Japanese legal studies as a parochial and stagnant field, if not dead outright. It is hard to say to the benefit of whom.

Finally, it is sad but necessary to mention the unexpectedly high number of typographical and formatting errors. Most seem to be relics of the various delete/cut/paste operations presumably performed during the revision, and they do not prevent the reader from discerning the meaning. Still, it is quite surprising to find comments directed to the proofreader that eluded deletion and were ultimately printed both in footnotes and the body of the text (p. 134 fn. 55; p. 149 fn. 10; p. 279).⁸

This review assessed *Japanese Law* from a very specific perspective, one that might not necessarily be that of the book’s targeted audience. It is a fact that the three editions of *Japanese Law* have for thirty years served as an indispensable window on the Japanese legal system for jurists who could not access sources in Japanese. Despite the shortcomings mentioned above, related in part to the expectations and the needs of this reviewer, the book achieves the goals it declares in the preface.

Japanese Law has been a must-have book in any library with a section on foreign or comparative law, as well as in private collections of legal scholars or law offices having an interest in Japan. This fourth edition will no doubt extend this state of affairs, consolidating the position of *Japanese Law* as one of the most popular generalist textbooks on Japanese law in English, and one that cannot be ignored.

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7 Here ‘recent’ means sources subsequent to the publication of the third edition, i.e. later than 2009. Two of the four English sources cited are book chapters by ODA himself. Less recent sources are a bit more prevalent but still not as plentiful as one would expect from this work.

8 The lack of editorial care is quite striking also in consideration of the hefty price tag of the volume: at the time of writing \$165 on the OUP website or €156 from an online seller in Germany for the hardcover version, \$153 for the eTextbook, and €113 for the Kindle version.

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